

# Exhibit 7

## Don Apodaca

1           UNITED STATES DISTRICT COURT  
 2           STATE OF MARYLAND  
 3  
 4   IN RE MICROSOFT CORP. ) Civil Action No.:  
      ANTITRUST LITIGATION ) JFM-02-CV-2952  
 5           )  
 6   BURST.COM, INC.,     )  
 7           )  
 8           Plaintiff, )  
 9           )  
 10          vs.      )  
 11          )  
 12   MICROSOFT CORP.,     )  
 13           )  
 14           Defendant.)  
 15          )  
 16  
 17          DEPOSITION OF:  
 18          Don Apodaca  
 19  
 20          MONDAY, DECEMBER 8, 2003  
 21          12:30 p.m.  
 22  
 23          REPORTED BY:  
 24          Bill Ionescu, CSR 11417  
 25

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1       LET IT BE KNOWN THAT Don Apodaca did offer  
 2       sworn testimony in deposition before Bill Ionescu,  
 3       Certified Shorthand Reporter 11417 for the State of  
 4       California, commencing at 12:30 p.m. on Monday,  
 5       December 8, 2003, at the Hilton Waterfront Beach Resort,  
 6       Audobon Room, located at 21100 Pacific Coast Highway,  
 7       Huntington Beach, State of California.

## 9 APPEARANCES OF COUNSEL:

## 10 FOR THE PLAINTIFF:

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## 25 ALSO PRESENT: Tim Nolan, Video Operator

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1 Q. Were you involved with the ongoing sales efforts 2 of Internet? 3 A. No. 4 Q. And you became an independent contractor to Burst 5 after November of 2000, is that what you stated? 6 A. Yes. 7 Q. What was the nature of that arrangement? 8 A. Commission only. 9 Q. When your employment with Burst ended in November 10 of 2000, what did you do with the documents that you had 11 created or received as an employee of Burst.com? 12 A. What did I do with the documents -- 13 Q. Well, e-mails, things like that. 14 A. I have some files that I used for ongoing sales 15 as an independent contractor; I threw a lot of it away. 16 Q. When did you throw that away, those files away? 17 A. I threw some away right after the formative 18 change in the operations of the company; some, 19 periodically, over time. I still have some. 20 Q. You still have some files in your possession? 21 A. Yes. 22 Q. Are they at your residence, those files? 23 A. Some. 24 Q. And where are the other files that you still have 25 in your possession?	12:39:14 12:39:17 12:39:18 12:39:19 12:39:23 12:39:25 12:39:26 12:39:30 12:39:41 12:39:45 12:39:47 12:39:55 12:39:58 12:40:04 12:40:10 12:40:16 12:40:21 12:40:28 12:40:32 12:40:38 12:40:40 12:40:41 12:40:47 12:40:48 12:40:51	1 Q. Do you know what those options were worth, say, 2 three years ago? 3 A. No. 4 MR. SONNENSCHEIN: The court reporter will mark 5 as Exhibit A-1 an e-mail and attachment that contains the 6 Bates number starting at BUR-0180405 and running through 7 BUR-0180408. 8 (Exhibit A-1 is marked for identification.) 9 BY MR. SONNENSCHEIN: 10 Q. Okay. On the first page of Exhibit A-1 is an 11 e-mail from "YWW! Strategic Resources," sent November 16th, 12 2000, to Don at Burst.com, subject, "Don Apodaca completed 13 resume." 14 Mr. Apodaca, do you recognize this document? 15 A. I recognize the contents. 16 Q. Okay. 17 A. I don't -- is this a service, I guess? I don't 18 remember if I engaged -- I might have engaged a resume 19 writing service to tailor this. I don't recall. But the 20 contents are familiar, yes. 21 Q. Okay. I'd like to focus your attention on the 22 portion of your resume on the second page of Exhibit A-1, 23 which contains the Bates number BUR-0180406. About middle 24 down the page it says, "Regional sales manager, 2000 to 25 the present." On the fourth bullet point to this page it	12:42:15 12:42:19 12:42:20 12:42:45 12:42:47 12:43:05 12:43:13 12:43:32 12:43:32 12:43:56 12:44:00 12:44:09 12:44:13 12:44:16 12:44:36 12:44:39 12:44:40 12:44:44 12:44:50 12:44:55 12:44:56 12:45:01 12:45:10 12:45:20 12:45:24
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1 A. I don't know if I have any in storage. I had -- 2 I don't think I have any in storage, but I can't say that 3 for 100 percent certain. 4 Q. Okay. Do you have any financial interest in 5 Burst.com? 6 A. I don't know. 7 Q. Did you at any time own either stock or stock 8 options in Burst.com? 9 A. Yes. 10 Q. Did you sell those options -- I'm sorry. What 11 did you have, stock in Burst.com? 12 A. I had options. 13 Q. Did you exercise those options? 14 A. No. 15 Q. So you still have options in Burst.com? 16 A. I don't know the state of those options in light 17 of their change of ownership structure in the last three 18 years. 19 Q. Okay. 20 A. It was not preferred stock. 21 Q. Okay. Do you have any idea what those options 22 are worth? 23 A. Currently? 24 Q. Currently. 25 A. No.	12:40:51 12:41:03 12:41:07 12:41:08 12:41:12 12:41:16 12:41:19 12:41:23 12:41:24 12:41:25 12:41:34 12:41:36 12:41:38 12:41:40 12:41:43 12:41:47 12:41:54 12:41:59 12:42:00 12:42:01 12:42:03 12:42:11 12:42:12 12:42:14 12:42:14	1 says, "Ranked number one in sales of hosting services." 2 So I take it, from this document, that you were 3 Burst.com's number one salesperson for hosting services? 4 A. It was a -- I was one of the very few that even 5 attempted to sell the hosting services as provided, as a 6 distinction from soliciting business or actually selling 7 the license for Burst products. The hosting service was 8 an ASP model that was formative -- in the formative 9 stages, rolling out, and I was one of the few that secured 10 service contracts for the use of that. 11 The scale of it was small. "Number one ranking" 12 is just from my familiarity in selling it compared to my 13 peers. I'm the one that had more business than anybody 14 else generated with this type of revenue generating 15 activity. 16 Q. Okay. 17 A. It was not a ranking that came from sales 18 management down to the troops, so to speak. 19 Q. Okay. Now, you said that many of your colleagues 20 had not attempted to sell Burst's hosting services; is 21 that correct? 22 A. I was more active -- I don't know -- I couldn't 23 tell you specifically, from recollection, as to the degree 24 of effort my peers made in that regard. 25 Q. You mentioned something about an ASP model.	12:45:27 12:45:39 12:45:45 12:45:52 12:46:00 12:46:09 12:46:13 12:46:21 12:46:27 12:46:31 12:46:35 12:46:43 12:46:48 12:46:51 12:46:54 12:46:55 12:46:55 12:47:04 12:47:12 12:47:14 12:47:21 12:47:21 12:47:29 12:47:33 12:47:35
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